

Federal Legislation and State Taxes

MSATA Annual Meeting
Traverse City, Michigan
August 21, 2006

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Purpose

- Review federal legislation affecting state taxation
 - What is going on
 - What's likely to happen
- Lessons learned (hard way) over time

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Business Activity Tax

- Expansion of P.L. 86-272
 - Types of transactions
 - Types of taxes covered
- Physical presence + carve-outs standard
 - 21 days, protected activities, software carve-out, and independent/dependent contractor exclusion
- Issues for states
 - Revenue impacts
 - Opportunities for planning/sheltering
 - Impact on in-state businesses

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BAT - Cont.

- **Reported by House Judiciary**
- **Pulled from House floor -- possible come back**
- **Reasons:**
 - **State contacts**
 - State-by-state numbers
 - **CBO mandate report**
 - **Approaches to leadership**
- **Senate hearing -- Action unlikely**

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Remote Sales

- **Authority to require remote sellers to collect**
 - If SST Agreement is operational
 - If Member of the Agreement
 - If Agreement meets standards in legislation
 - If seller is above "Small Business Exception"
- **Legislation introduced in Senate**
 - Bills identical but for "Small Business" exception

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Remote Sales: Issues for States

- **Vendor compensation**
- **Telecommunications simplification**
- **Federal court review**
- **Small seller exception**

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Cuno Legislation

- **Authoring tax incentives for economic development**
- **Tests for incentives**
- **Issues for states**
 - Clarity and certainty
 - Avoid unintended consequences/litigation
 - Protect commonly used incentives
- **What to do in wake of S. Ct. decision**

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Telecommunications Act Rewrite

- **Accommodate new services and new providers**
 - Broadband transmission, video, VoIP
- **Establish “loose” federal regulatory structure for new services**
- **Work on parity among providers**
- **Related issues -- net neutrality**

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Telecommunications - Cont.

- **Effort to avoid advertent or inadvertent impact on state taxation**
 - Added permanent ITNA extension
 - Added “Cell Phone Tax Moratorium”
 - Issues for state-level reform efforts
- **Carrying significant weight**
 - Net neutrality
 - Franchising and other preemptions
- **Final action unlikely**

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Internet Tax Nondiscrimination

- “Battle” will be joined in 2007
 - Jurisdictional issue
- Issues include:
 - Period of extension
 - Definition of “Internet access”
 - Existence/coverage of any grandfathers
 - Any necessary clarifications of 2004 enactments
 - Relevance of GAO report on “no impact on deployment or adoption”

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Other Legislation

- Nonresident taxation
 - Retired partners
 - Telecommuting
- 4-R Act for interstate pipelines
- 4-R Act for telecommunications firms??
- Rental cars??

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Prognosis

- Short session, crowded calendar argues against final action
- BAT likely on agenda
- “Lame Duck” session and an Omnibus Bill seem assured
- Efforts to bundle items and push trade-offs always possible
- Risk of “rifle shot” insertions

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Lessons Learned

- Increased preemption efforts to be expected
 - ‘New’ industries/technologies
 - Win many “battles” at one level
 - Desire for “one set of rules”
 - Concerns about “discrimination”
 - Concerns about over-reaching
 - Resolution of long-standing grievances

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Lessons Learned -- Cont.

- Lack of context
 - No partnership or intergovernmental fiscal system
- Lack of institutions
 - Committees of jurisdiction
 - Executive agencies
 - CBO, CRS
- Congress sees itself as referee or protector
 - Choose among ‘friends’
 - Restrict states to pursue ‘national priorities’
 - Trade-off issues
 - Do the “right thing”

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Lessons Learned -- Cont.

- State-level contacts vital
 - Role of Washington office
- “Credible” numbers important
- Consistent “bumper sticker” messages
- Fighting something with something

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Challenges for States

- **Saying “No” ain’t good enough**
- **Need to ID what is important and what we want**
- **How can we get to “one set of rules”**
 - Multi-state, action
 - Federal/state coordination
 - Federal framework
- **Be concerned about keeping a clean act at home**

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